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To: Microsoft ATR
Date: 1/28/02 4:00pm
Subject: Microsoft Settlement

Appropriate injunctive relief in an antitrust case should: (1) end the unlawful conduct; (2) "avoid a recurrence of the violation" and others like it; and (3) undo its anticompetitive consequences. See Nat'l Soc'y of Prof'l Eng'rs v. United States, 435 U.S. 679, 697 (1978); United States v. E.I. du Pont de Nemours & Co., 366 U.S. 316, 326 (1961); Int'l Salt Co. v. United States, 332 U.S. 392, 401 (1947); United States v. Microsoft Corp., 253 F.3d 34, 103, 107 (D.C. Cir. 2001)

The proposed settlement fails utterly to achieve these goals. Rather, it is another opportunity for Microsoft to litigate the definitions of the settlement, rather than participate fairly in the market. A settlement which leaves Microsoft free to hide features and functions of its operating system behind license restrictions and nondisclosure agreements, and then to use these functions to advantage its own applications development process and products is inadequate. The source code of Microsoft's operating system must be published and made available at nondiscriminatory rates to all users in order to prevent future misuse of this substantial advantage by Microsoft. The source code to Microsoft's Office products must be auctioned to vendors wishing to compete with Microsoft, whether on the Windows platform or elsewhere in order to redress the violations that use of these hidden functions by Microsoft has created. Microsoft must create an independent, not-for-profit entity, transfer title to its Internet Explorer code to that entity, and pay royalties for each copy of IE to that entity, which should then use the proceeds to fund development of software products which function across multiple platforms in order to open up the application development arena to non-Microsoft products.

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"It is, in fact, nothing short of a miracle that the modern methods of instruction have not yet entirely strangled the holy curiosity of inquiry."

- Albert Einstein (1879-1955) - Autobiographical Notes

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